



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Promote Policy     )  
and Program Coordination and Integration in     )  
Electric Utility Resource Planning.     )

R.04-04-003  
(Filed April 1, 2004)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO THE  
PETITION FOR MODIFICATION OF D.04-12-048 OF THE ENERGY PRODUCERS  
AND USERS COALITION

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**Southern California Edison Company's (U 338-E) Response to the  
Petition for Modification of D.04-12-048 of the Energy Producers and Users Coalition**

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AND USERS COALITION**

Pursuant to Rule 16.4 of the Commission’s Rules of Practice and Procedure, Southern California Edison Company (SCE) respectfully submits this response to the December 22, 2006 Petition for Modification (Petition) of D.04-12-048 of the Energy Producers and Users Coalition (EPUC). First, the Petition is untimely because it was not filed and served within one year of the December 16, 2004 effective date of D.04-12-048, as required by Rule 16.4 of the Commission’s Rules of Practice and Procedure. In addition, sound policy reasons support requiring cogeneration departing load customers to continue to assume their fair share of above-market costs of utility generation and procurement contracts acquired while they took bundled service from the utility. Exempting cogeneration departing load from non-bypassable charges would unfairly shift costs onto the remaining utility bundled service customers. Furthermore, the Petition wrongly characterizes non-bypassable charges arising from utility procurement of new generation resources as “ongoing utility procurement costs incurred in the normal course of business.” In fact, D.06-07-029 ordered the utilities to procure new generation capacity **on behalf of all customers** within their respective distribution service territories, which includes cogeneration departing load. Finally, the Petition exaggerates the consequences of non-bypassable charges on cogeneration facilities. Cogeneration facilities are already exempt from numerous non-bypassable charges and further exemption from such charges adopted in D.04-12-048 and D.06-07-029 is not warranted. Further, the Petition’s assessment of the impact of non-

bypassable charges on cogeneration economics is faulty. For these reasons, SCE respectfully requests that the Commission deny the Petition in its entirety.

## I.

### **THE PETITION SHOULD BE SUMMARILY DENIED AS UNTIMELY**

Rule 16.4(d) of the Commission's Rules of Practice and Procedure provides:

Except as provided in this subsection, **a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified.** If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.<sup>1</sup>

EPUC concedes that the Petition does not comply with the one-year requirement of Rule 16.4.<sup>2</sup> The Petition was filed on December 22, 2006, more than two years after the December 16, 2004 effective date of D.04-12-048. Furthermore, the Petition was filed three years after the December 18, 2003 effective date of D.03-12-059, the Mountainview decision which first adopted ten-year cost recovery through a non-bypassable charge.

EPUC's excuses for its untimely Petition are specious. EPUC seeks to justify its late submission of the Petition on the ground that it sought rehearing of D.04-12-048.<sup>3</sup> However, EPUC's Application for Rehearing was rejected by the Commission in September of 2005.<sup>4</sup> Thus, by EPUC's own admission, the Petition was filed more than a year after EPUC's Application for Rehearing of D.04-12-048 was denied.

D.04-12-048 was issued after extensive evidentiary hearings that explicitly considered the circumstances under which non-bypassable charges are appropriate. In order to promote utility investment in new generation resources in the face of customer base uncertainty, the Commission concluded that the utilities should be allowed to recover the net uneconomic costs

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<sup>1</sup> Rule 16.4(d) of the Commission's Rules of Practice and Procedure (*emphasis added*).

<sup>2</sup> See Petition at 2.

<sup>3</sup> See *id.*

<sup>4</sup> See D.05-09-022 at 7-9.

of such investments through non-bypassable charges.<sup>5</sup> “Ensuring that utilities be allowed to recover their net stranded costs from all customers meets the Commission’s goals of providing ‘the need for reasonable certainty of rate recovery’ (as required under AB 57 . . . ) as well as best ensuring that California meets its energy needs.”<sup>6</sup>

EPUC actively participated in the evidentiary hearings that led to the issuance of D.04-12-048 and made nearly identical arguments to those it makes in the Petition.<sup>7</sup> The Commission properly rejected EPUC’s arguments in D.04-12-048, concluding that “[r]equiring departing customers to assume a fair share of their costs is [] consistent with the Commission’s policy of holding captive ratepayers harmless as required by state law.”<sup>8</sup> SCE has made numerous investments in new generation resources in reliance on the Commission’s assurances in D.04-12-048, and EPUC has not presented any new or changed facts, or other justification, as to why the policies adopted in D.04-12-048 should now be abandoned at this late date. Therefore, the Petition should be summarily denied as untimely, in accordance with Rule 16.4.

## II.

### **COGENERATION DEPARTING LOAD CUSTOMERS SHOULD CONTINUE TO ASSUME THEIR FAIR SHARE OF ABOVE-MARKET COSTS OF UTILITY GENERATION AND PROCUREMENT CONTRACTS ACQUIRED WHILE THEY TOOK BUNDLED SERVICE FROM THE UTILITY**

EPUC’s Petition is based on the flawed premise that non-bypassable charges would not be necessary if the utilities simply engaged in prudent resource planning for cogeneration departing load.<sup>9</sup> This argument ignores utility procurement obligations and the considerable risk of cost shifting due to cogeneration departing load. “The threshold policy issue underlying cost responsibility surcharges is to ensure that remaining bundled ratepayers remain indifferent to

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<sup>5</sup> See D.04-12-048 at 202-03, 229-30.

<sup>6</sup> See *id.* at 229, Conclusion of Law No. 13.

<sup>7</sup> See *id.* at 190.

<sup>8</sup> See *id.* at 229, Conclusion of Law No. 14.

<sup>9</sup> See Petition at 11-12, 31-36.

stranded costs left by [] departing customers.”<sup>10</sup> Even in December of 2004, the Commission recognized that it:

has [] made the utilities responsible for ensuring local reliability, accelerated the resource adequacy requirement from 2008 to 2006, and adopted RPS target goals resulting in the solicitation of new renewable energy sources by the utilities. These initiatives, combined with the existing overhang of utility retained generation and long-term DWR contracts significantly limit the flexibility that the utilities have to quickly adjust their resource portfolios. All of these resource additions benefit all existing customers by improving reliability and promoting renewable energy development.<sup>11</sup>

These concerns are as pertinent today as they were in December of 2004. In fact, utilities are now faced with even more stringent procurement obligations, including specific resource adequacy and RPS compliance requirements. The utility cannot eliminate these procurement obligations by simply forecasting cogeneration departing load, as EPUC asserts. Indeed, relying on a forecast of cogeneration departing load that might not materialize for resource adequacy and RPS procurement planning would be risky and costly.

Cogeneration departing load creates the same load uncertainty for the utility as other types of departing load, such as community choice aggregation (CCA). A cogeneration customer’s ability to depart from utility bundled service is entirely within its discretion. As a result, actual cogeneration departing load will inevitably differ from any utility forecast. Nevertheless, the utility’s resource adequacy and RPS compliance requirements will not be reduced because its forecast of cogeneration departing load was not accurate. As a result, the utility will be forced to procure for forecast cogeneration departing load that does not materialize to meet resource adequacy and RPS compliance requirements. If cogeneration departing load customers are permitted to evade non-bypassable charges, they will, at their sole discretion, be able to shift the costs associated with this utility procurement onto the remaining utility bundled service customers.

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<sup>10</sup> D.04-12-048 at 201, Finding of Fact No. 28.

<sup>11</sup> *Id.* at 202, Finding of Fact No. 31.

The Commission has already recognized the unfairness that would result if such costs and risks could be shifted from customers who leave utility bundled service to the remaining bundled service customers.<sup>12</sup> For this reason, the Commission has required CCAs to execute a *binding* commitment to serve a certain amount of load at specified future date in order to avoid *future* non-bypassable charges:<sup>13</sup>

A CCA may execute a binding notice of intent with a commitment to a target date, at which [time] the CCA is responsible [for] its own energy procurement and resource adequacy. If the CCA does so, its customers will not be responsible for stranded costs of any utility commitments entered into after the agreed upon date. However, if the CCA does not meet the target date, it will be liable for any incremental costs that the utility incurs in excess of its average portfolio cost to serve the load that the CCA is not able to serve.<sup>14</sup>

“The objective of a binding notice of intent is to transfer liability for customer power purchases from the utility to the CCA according to a specified date and in so doing minimize the liabilities of all customers for stranded cost associated with power purchase commitments.”<sup>15</sup> Absent such a binding commitment on the part of cogeneration departing load, the Commission’s policy of “ensur[ing] that remaining bundled ratepayers remain indifferent to stranded costs left by [] departing customers”<sup>16</sup> should continue to apply and cogeneration departing load should continue “to assume a fair share of their costs . . . .”<sup>17</sup> EPUC has not presented any evidence that supports a change to these important policies. Therefore, the Petition should be denied.

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<sup>12</sup> See *id.* at 57-60.

<sup>13</sup> The future non-bypassable charges from which CCAs are exempt if a binding notice of intent is executed are those associated with the above-market costs of utility generation and procurement contracts acquired after the binding commitment is made. The exemption does not apply to non-bypassable charges such as the Public Purpose Program Charge (PPPC) and the Nuclear Decommissioning Charge (NDC).

<sup>14</sup> D.04-12-048 at 201, Finding of Fact No. 29.

<sup>15</sup> D.05-12-041 at 30-31.

<sup>16</sup> D.04-12-048 at 201, Finding of Fact No. 28.

<sup>17</sup> See *id.* at 229, Conclusion of Law No. 14.

### III.

#### **THE PETITION WRONGLY CHARACTERIZES NON-BYPASSABLE CHARGES ARISING FROM UTILITY PROCUREMENT OF NEW GENERATION AS ONGOING UTILITY PROCUREMENT COSTS INCURRED IN THE NORMAL COURSE OF BUSINESS**

The Petition also wrongly characterizes non-bypassable charges arising from utility procurement of new generation resources as “ongoing utility procurement costs incurred in the normal course of business.”<sup>18</sup> D.06-07-029 ordered the utilities to procure new generation capacity **on behalf of all customers** within their respective distribution service territories and to allocate the costs and benefits associated with the development of these new resources to these benefiting customers.<sup>19</sup> In D.06-07-029, the Commission explicitly found that this procurement was not ongoing utility procurement in the normal course of business. Rather, the utilities were ordered to conduct this procurement on behalf of benefiting customers, which are defined as “all bundled service customers, [direct access] customers and [community choice aggregation] customers.”<sup>20</sup>

Public Utilities Code section 380 requires that the costs associated with these new generation resources be allocated to all benefiting customers, including current cogeneration departing load, on a non-bypassable basis:

An electrical corporation’s costs of meeting resource adequacy requirements, including, but not limited to, the costs associated with system reliability and local area reliability, that are determined to be reasonable by the commission, or are otherwise recoverable under a procurement plan approved by the commission pursuant to Section 454.5, **shall be fully recoverable from those customers on whose behalf the costs are incurred**, as determined by the commission, at the time the commitment to incur the cost is made or thereafter, **on a fully nonbypassable basis**, as determined by the commission.<sup>21</sup>

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<sup>18</sup> Petition at 10-11.

<sup>19</sup> See D.06-07-029 at 26.

<sup>20</sup> *Id.* at 26 n.21.

<sup>21</sup> Cal. Pub. Util. Code § 380(g) (*emphasis added*).



Similar to the non-bypassable charges described above, exempting cogeneration departing load from non-bypassable charges arising from utility procurement of new generation resources would unfairly force bundled service customers to subsidize new generation facilities that provide system reliability benefits to cogeneration departing load and would be inconsistent with Public Utilities Code section 380. The Petition wrongly states that “[c]ustomer generation’ typically serves load relying on privately funded distribution wires, rather than relying on the utility grid.”<sup>22</sup> In fact, the utility grid typically provides standby service to back up the load of self-generation customers. New generation costs are being incurred on behalf of these customers and they, therefore, are benefiting customers within the meaning of D.06-07-029. Accordingly, cogeneration departing load should remain subject to non-bypassable charges arising from utility procurement of new generation resources.

#### IV.

#### **THE PETITION EXAGGERATES THE CONSEQUENCES OF NON-BYPASSABLE CHARGES ON COGENERATION FACILITIES**

The Petition also exaggerates the consequences of non-bypassable charges on cogeneration facilities. First, the Petition makes exaggerated claims that non-bypassable charges are “unknown and unknowable” burdens on cogeneration facilities.<sup>23</sup> These charges are, indeed, known and knowable at a given point in time. At any point a customer plans to install cogeneration, the utility can advise the customer of its expected non-bypassable charges. Moreover, cogeneration departing load customers will not be assessed *new* non-bypassable charges arising from D.04-12-048, which EPUC seeks to modify, after they depart. D.04-12-048 does not require cogeneration departing load customers pay non-bypassable charges for generation built or contracts entered into by the utility *after* they depart.

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<sup>22</sup> Petition at 1 n.3.

<sup>23</sup> See *id.* at 13.

Furthermore, EPUC overstates the applicability of current non-bypassable charges to cogeneration customers. Contrary to EPUC’s claims,<sup>24</sup> cogeneration customers are currently exempt from the following non-bypassable charges:

(1) DWR Bond Charge	Not applicable to clean generation of less than 1 MW
(2) CDWR Power Charge indifference adjustment	Not applicable to self-generation meeting the Best Available Technology, up to a cap of 3000 MW
(3) Competition Transition Charge	Not applicable to cogeneration customers
(4) Nuclear Decommissioning Charge, (6) Public Purpose Program Charge, and (7) Trust Transfer Amount Charge	Not procurement-related

In addition, the Petition uses faulty analysis to assess the impact of non-bypassable charges on cogeneration economics.<sup>25</sup> The Petition claims that a \$10/MWh non-bypassable charge would reduce the rate of return a cogeneration facility would otherwise earn by approximately 9%.<sup>26</sup> However, this analysis is fundamentally flawed. The costs recovered through non-bypassable charges are, by their very nature, assessed to customers regardless of whether the customers are served by utility generation or self-generation. Thus, customers pay the costs reflected in non-bypassable charges regardless of whether or not they have a cogeneration facility. As a result, non-bypassable charges have no impact on the customer’s cogeneration economics. EPUC’s analysis does, however, demonstrate that allowing cogeneration departing load customers to avoid paying their fair share of the above-market costs of utility generation and procurement contracts could provide windfall benefits to such customers at the expense of the remaining utility bundled service customers. Non-bypassable charges are the only way “to ensure that remaining bundled ratepayers remain indifferent to stranded costs left by [] departing customers.”<sup>27</sup> The Petition should be denied.

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<sup>24</sup> See *id.* at 15, Table 1.

<sup>25</sup> See *id.* at 16.

<sup>26</sup> See *id.*

<sup>27</sup> D.04-12-048 at 201, Finding of Fact No. 28.

V.

**CONCLUSION**

For the foregoing reasons, SCE respectfully requests that the Commission deny the Petition in its entirety.

Respectfully submitted,

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January 22, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) RESPONSE TO THE PETITION FOR MODIFICATION OF D.04-12-048 OF THE ENERGY PRODUCERS AND USERS COALITION on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **22nd day of January, 2007** at Rosemead, California.

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PPM ENERGY, INC.  
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Monday, January 22, 2007

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